IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7194 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

GOVINDBHAI V MAKWANA

Appearance:

1. Special Civil Application No. 7194 of 1988

MR HARDIK C RAWAL for Petitioner No. 1

MR KL PANDYA AGP for Respondent No. 1

MR SN SHELAT for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/12/2002

ORAL JUDGEMENT

#. The petitioner-Gujarat State Road Transport Corporation (for short "the Corporation") has challenged in this petition the impugned order dated 8.8.1888 Annexure-C passed by the respondent No.2-the Conciliation Officer and Assistant Labour Commissioner, Godhra rejecting the application of the petitioner seeking permission to discontinue service of the respondent-workman on the ground that in the inquiry the charges were proved against him.

#. The allegations against respondent No.1, who was conductor of the bus was that there were 57 passengers in the bus and respondent No.1 did not collect fare from them. After holding regular inquiry against him the petitioner-Corporation decided to dismissed him from services on the ground that the charges which are found to be proved are of very serious nature and accordingly the competent authority applied for permission under the provisions of Section 33(1) of the Industrial Disputes Act, 1947 and passed an order suspending the respondent No.1 from service pending permission application. While placing him under suspension the petitioner-Corporation ordered that the respondent No.1-workman be paid only 25% of the salary pending the decision of the competent authority on an application submitted by them. However, the competent authority was of the opinion that under the provisions of Industrial Disputes Act initially for a period of 90 days the workman should have been paid 50% of subsistence allowance and thereafter 75% and there is a breach committed by the corporation in paying only 25% of subsistence allowance, therefore, permission to dismiss the workman from service cannot be granted. Hence, this petition.

#. Mr.Raval, learned counsel for the petitioner vehemently submitted that when the corporation found that the respondent No.1 did not collect fare from 57 passengers travelling in the bus then, in such a gross case the competent authority ought not to have refused permission to dismiss the workman on such technical ground. He also submitted that provisions of Industrial Dispute Act would not be applicable on the facts of this case. Relying upon the judgment of this court in case of Mansingh R. Parmar Vs. Gujarat State Road Transport Corporation, Ahmedabad reported in 23(2) GLR 708 it was submitted that the Corporation was competent enough to suspend its employee without wages pending decision of application.

#. In case of Mansingh's case (supra) facts were totally different. The petitioner Mansingh was employee of the

Corporation. He was dismissed from service by an order dated 9.9.1981. After dismissing from service, the Corporation applied before the Conciliation Officer under Section 33(2) of the Industrial Disputes Act for approval of its action. Thereafter, on 2.1.1982 the order of suspension was passed by the Corporation. In the instant case, the Corporation took decision to dismiss the respondent-Workman from service, but no such order seems to have been passed as the same is not produced.

#. After the judgment of the learned Single Judge of this court in Mansingh's case much water has been flown and the Hon'ble Supreme Court in case of Fakirbhai Fulabhai Solanki Vs. Presiding Officer reported in AIR 1986 SC 1168 clearly held that denial of payment of subsistence allowance to a workman placed under suspension, during the pendency of the proceeding under S.33(3) amounts to violation of principles of natural justice since it is difficult to accept the result of the application made before the Tribunal it is reasonable to hold that the workman against whom the application is made should be paid some amount by way of subsistence allowance to enable him to maintain himself and the members of his family and also to meet the expenses of the litigation before the Tribunal. In my considered opinion, in the instant case, paying 25% of salary as subsistence allowance is as good as denying him the opportunity to defend himself and to maintain his family. Thus, it cannot be said that while rejecting permission to dismiss the respondent-workman from service on this ground, the respondent No.2 competent authority committed an error, which is required to be corrected by this court in its jurisdiction under Article 227 of the Constitution of India.

#. In the instant case, the competent authority has also taken into consideration the defence of the respondent-workman that the incident in question took place 1.11.1986 and he was suffering from blood pressure and on that day all of a sudden he had high blood pressure and became unconscious, therefore, when the bus was checked at that time he could not issue tickets. He had no mal-intention in not issuing tickets and collecting money. It is also clear that though request was made by him in the inquiry to examine driver of the bus the said request was refused. Considering all these if the competent authority has refused permission then this court would certainly not interfere with such decision in its supervisory jurisdiction under Article 227 of the Constitution of India after lapse of 14 years.

In view of the above, this petition fails and is hereby dismissed with no order as to costs.

(B.J.Shethna, J.)

*Pvv